

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

April 7, 2003

Dear Xxxxx:

This letter is in response to your letter dated October 14, 2002. We regret our delay in responding. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

AAA manufactures and sells products used by ophthalmologists and other eye care professionals to improve or correct vision in patients with refractive conditions, cataracts, and glaucoma. We are trying to determine the taxability of our products as sold within your State.

The Company's primary products are IOL's (Intra-Ocular Lenses) that are sold in a number of models of differing materials, design, and corrective diopters. Most of the Company's customers are hospitals or ambulatory surgical centers who maintain consignment agreements with the Company to stock lenses for surgery. Lenses are removed by the customer from their consignment inventory for use in surgery, the customer contacts the Company to notify that a lens has been used and it is then billed upon implant. Other products are ordered as needed by the account and filled from our warehouse in STATE, which are then shipped via common carrier freight on board shipping point.

Enclosed with this letter is a product description for each of the following items:

- IOL's (Intra-Ocular Lenses) and Toric IOL's
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- ICL's (Implantable Contact Lenses)
-
- PRODUCT
-

- *** Glaucoma Drainage Device
-
- *** system, including *** tubing used with certain type phacoemulsification machines during eye surgery.
- And other instruments, devices, and equipment used in surgery that we manufacture or that are manufactured by others in the ophthalmic products industry.

We respectfully request a ruling of Illinois sales and use tax with regard to the following:

1. Please advise as to the taxable nature of each of our products as described, including whether they are eligible for the State's Food/Drug/Medical Appliance rate.
2. Please advise on whether the lenses billed upon implant from consignment inventory locations are considered sales from locations in Illinois, and for those products eligible for the Food/Drug/Medical Appliance that are filled from consignment locations advise whether they are taxed at the municipal or state rate.
3. And finally, please advise on the taxability of freight charges for shipment of products to our customers in Illinois.

Should you have any questions that need to be addressed in responding to our request, please contact me. Thank you for your assistance in this matter.

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax unless an exemption is specifically provided. Medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1%. See the enclosed copy of 86 Ill. Adm. Code 130.310. With a few exceptions, lower rate items are not subject to local taxes. Items subject to this lower tax rate include prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities. A medical appliance is defined as an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See part (c) of Section 130.310. Medical devices that are used for diagnostic or treatment purposes do not qualify for the lower tax rate. Please note that supplies and cosmetics do not qualify for the reduced rate, while sterile dressings, bandages and gauze do qualify for the reduced rate.

Corrective medical appliances such as hearing aids, eyeglasses and contact lenses are examples of qualifying items. It is our understanding that the Intra-Ocular Lenses are lenses for the eye that are permanently placed in the eyes of patients that have cataract surgery. If this is the case, it is the Department's opinion that the lenses qualify for the low (1%) rate of tax as medical appliances. The Glaucoma Drainage Device that is implanted in the eye of a patient with glaucoma to reduce intraocular pressure qualifies for the low rate of tax. The use of *** as a surgical aid and the use of the *** phacoemulsification system including *** tubing during surgery do not qualify for the low rate of tax.

You mention that you have a "consignment agreement" with your customers. We would require more specific information about the nature of this agreement before we can provide additional information. Section 270.115 provides information for use in determining the applicability of local taxes, and although written specifically for home rules taxes, applies to all local taxes. As you will note from the enclosed copy of Section 270.115, even when purchase orders are accepted outside Illinois, local taxes will be incurred if the tangible personal property sold is located in an inventory of the retailer located within a taxing body at the time of sale. Generally, home rule municipalities lack authority to impose taxes upon items that qualify as food, drugs and medical appliances (see above discussion). However, there are several other taxes imposed by other types of local government entities and administered by the Department which are applicable to these types of items (see, for instance, the Regional Transportation Authority Retailers' Occupation Tax, the County Water Commission Retailers' Occupation Tax, the Metro East Mass Transit District Retailers' Occupation Tax).

From the limited information you have provided, your customers appear to be engaged in making sales of services. Consequently, your liability may be affected by the manner in which your customers handle their liability, if any, under the Service Occupation Tax. Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon how the serviceman is classified. There are four ways that the tax can be calculated: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Under the first three methods, servicemen would provide resale certificates to their suppliers. Under the last option, servicemen would pay Use Tax to their Illinois-registered suppliers.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.